

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11607 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI Sd/-

And

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF CUSTOMS

Versus

HAMSUKHLAL NANALAL SHAH

Appearance:

1. Special Civil Application No. 11607 of 2000
MR ASIM J PANDYA for Petitioner No. 1
DS AFF.NOT FILED (R) for Respondent No. 1
MR MIHIR H JOSHI for Respondent No. 2
DELETED for Respondents No. 3-7
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The petitioner, The Commissioner of Customs, Kandla has challenged the order passed by the Customs, Excise, and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai dated 01/06/2000 on Rectification of Mistakes Application filed in relation to two respondents, respondent Nos. 1 and 2 as well as the original order dated 27/05/1998.

2 It appears that the order in original was passed on 30/12/1986 by the Commissioner of Customs, Rajkot, who was having jurisdiction over the entire area and the transaction in question of the respondent in relation to goods imported at Kandla port. There is no dispute that the jurisdiction of Commissioner of Customs, Rajkot extended upto Kandla Port till 1/4/1990 and thereafter a separate collectorate appointing Collector of Customs, Kandla came into existence on and from 2/4/1990. Therefore, when the Tribunal heard and decided the matter on 27/4/1998 the respondent-Commissioner of Customs, Rajkot, ought to have been substituted by the Collector of Customs, Kandla. However, as the department could not bring the said fact to the notice of the Tribunal, the Tribunal held that as the jurisdiction will be available with the Collector of the Port through which the goods were cleared, the notice and the order of the Collector, Rajkot were without jurisdiction. Thus, the appeals were allowed by the Tribunal. In effect, the Tribunal accepted the position that now the Commissioner of Customs, Kandla had jurisdiction.

3 Two Rectification Applications were moved by the Commissioner of Customs, Kandla. An objection was raised on behalf of the respondents to the effect that when the appeal was preferred against the order of the Commissioner, Rajkot, rectification Applications filed by the Commissioner of Customs, Kandla were not maintainable. The Tribunal accepted the said contention and dismissed the Rectification Applications by its order dated 1/6/2000.

4 Having heard Mr.Asim Pandya for the petitioner and Mr.Mihir Joshi for respondent No.2 we find that the impugned order dated 1/6/2000 on Rectification of Mistake Applications cannot be allowed to stand. The Tribunal has taken an unnecessary technical stand without appreciating the fact that once the Commissioner of Customs, Rajkot who had passed the order in original was

divested of jurisdiction with effect from 2/4/1990 and the jurisdiction over Kandla port vested with Commissioner of Customs, Kandla only he would be required to file Rectification Applications and in fact has filed the same accordingly. We, therefore, quash and set aside the impugned order dated 1/6/2000, Annexure "A" and as a consequence two Rectification Applications filed by the Commissioner of Customs, Kandla are accepted and the original order dated 27/4/1998 passed by CEGAT is also quashed and set aside. The Tribunal shall take up the appeals in relation to, two respondents viz. Hasmukhlal Nanalal Shah and Anilkumar K. Vasant for hearing and render its decision on merits of the matter.

5. On 15/11/2000 while issuing the Notice, the Court had called for an explanation from the petitioner as to why despite the opportunities having been given by the Tribunal, Rectification Applications in relation to other five parties were not moved by the Commissioner of Customs, Kandla. We have been informed by Mr. Asim Pandya that the Commissioner of Customs, Kandla has filed five separate Rectification Applications in relation to those five parties.

6. The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-

(D.M. Dharmadhikari, C.J.)

Sd/-

(D.A. Mehta, J.)

m.m. bhatt